

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CAROLINE HILBER,
14723 Fernway Avenue
Cleveland, OH 44111,

Plaintiff

vs.

MALLEY’S CANDIES, INC.,
13400 Brookpark Road
Cleveland, OH 44135,

Defendant.

) CASE NO.: 1:22-CV-02305

)

) JUDGE

)

) **COMPLAINT**

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) *JURY DEMAND ENDORSED HEREON*

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Plaintiff Caroline Hilber (“Hilber”), for her complaint against Defendant Malley’s Candies, Inc. (“Malley’s”), states and alleges as follows:

INTRODUCTION

1. This is a copyright suit under 17 U.S.C. § 101, et seq.
2. Malley’s is willfully infringing upon Hilber’s intellectual property in connection with the use of its competing products in Ohio and the United States of America. These infringing activities are illegal, and have harmed and will continue to harm Hilber.
3. Hilber has given notice to Malley’s that Malley’s use of Hilber’s intellectual property is violative of 17 U.S.C. § 101, et seq. and infringing of Hilber’s intellectual property.

THE PARTIES

4. Plaintiff Caroline Hilber is a resident of Cuyahoga County, Ohio doing business as an independent consulting graphic artist providing graphic design services wither her principal place of business in Cuyahoga County, Ohio.

5. Malley's, also known as Malley's Chocolates, is a corporation organized under the laws of the state of Ohio doing business in locally, nationally and internationally.

JURISDICTION AND VENUE

6. This Court has original subject matter jurisdiction over Hilber's copyright claims pursuant to 28 U.S.C. § 1338(a).

7. This Court also has original jurisdiction over Hilber's unfair competition claims, pursuant to 28 U.S.C. § 1338(b), because they are joined with Hilber's substantial and related copyright claims.

8. Pursuant to Ohio Revised Code § 2307.382, this Court has personal jurisdiction over Malley's because, among other reasons, Malley's regularly solicits and transacts business, supplies goods, and has caused tortious injury in the State of Ohio, knowing that Hilber would be harmed in this state.

9. Venue is proper pursuant to 28 U.S.C. § 1391(b) because a substantial portion of the infringement were made in Ohio, and further because the affected intellectual property is the property of Hilber, a resident of Ohio company.

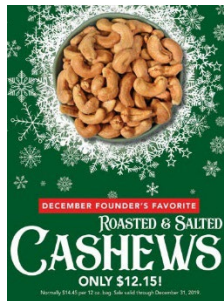
THE COPYRIGHTS

10. Hilber has registered certain original works, including her creative material, as copyright with the United States Copyright Office.

11. Hilber registered with the United States Copyright Office her original artwork “Thanksgiving Foil Product Photo,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 24, 2022, pictured here.



12. Hilber registered with the United States Copyright Office her original artwork “November Cashew Flyer Print,” bearing Copyright Registration Number VAu 1-450-811 and VAu 1-459-070 with an effective date of registration of October 10, 2021, pictured here.



13. Hilber registered with the United States Copyright Office her original artwork “Peppermint Ohs!,” bearing Copyright Registration Number VAu 1-459-070 with an effective date of registration of December 22, 2021, pictured here.



14. Hilber registered with the United States Copyright Office her original artwork “Christmas Royals Milk Caramels,” bearing Copyright Registration Number VAu 1-459-145 with an effective date of registration of December 22, 2021, pictured here.



15. Hilber registered with the United States Copyright Office her original artwork “Christmas Royals Milk Peanut Butter,” bearing Copyright Registration Number VAu 1-459-145 with an effective date of registration of December 22, 2021, pictured here.



16. Hilber registered with the United States Copyright Office her original artwork “Christmas Royals Dark Caramel,” bearing Copyright Registration Number VAu 1-459-145 with an effective date of registration of December 22, 2021, pictured here.



17. Hilber registered with the United States Copyright Office her original artwork “Christmas Royals Dark Caramel,” bearing Copyright Registration Number VA 2-484-339 with an effective date of registration of January 26, 2022, pictured here.



18. Hilber registered with the United States Copyright Office her original artwork “Cyber Monday,” bearing Copyright Registration Number VAu 1-459-070 and VAu 1-459-145 with an effective date of registration of December 22, 2021, pictured here.



19. Hilber registered with the United States Copyright Office her original artwork “Sea Salt Christmas Product Photos,” bearing Copyright Registration Number VAu 1-459-145 with an effective date of registration of December 22, 2021, pictured here.



20. Hilber registered with the United States Copyright Office her original artwork “Sea Salt Christmas Product Photos,” bearing Copyright Registration Number VAu 1-459-145 with an effective date of registration of December 22, 2021, pictured here.



21. Hilber registered with the United States Copyright Office her original artwork “Christmas Open House,” Design Copyright Registration Number VAu 1-459-070 with an effective date of registration of December 22, 2021, and Photograph Copyright Registration Number VA 2-274-212 with an effective date of registration of October 12, 2021, pictured here.



22. Hilber registered with the United States Copyright Office her original artwork “St. Patrick’s Pretzels,” bearing Copyright Registration Number VAu 1-450-880 with an effective date of registration of October 10, 2021, pictured here.



23. Hilber registered with the United States Copyright Office her original artwork “St. Patrick’s Pretzels,” bearing Copyright Registration Number VAu 1-450-880 with an effective date of registration of October 10, 2021, pictured here.



24. Hilber registered with the United States Copyright Office her original artwork “Pumpkin Pie Truffle Product Photo,” bearing Copyright Registration Number VAu 1-450-880 with an effective date of registration of October 10, 2021, pictured here.



25. Hilber registered with the United States Copyright Office her original artwork “Christmas Shipping,” bearing Copyright Registration Number VAu 1-459-070 with an effective date of registration of December 22, 2021, pictured here.



26. Hilber registered with the United States Copyright Office her original artwork “Bodacious Product Photo,” bearing Copyright Registration Number VAu 1-459-145 with an effective date of registration of December 22, 2021, pictured here.



27. Hilber registered with the United States Copyright Office her original artwork “Valentines Pretzel Dark,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 26, 2022, pictured here.



28. Hilber registered with the United States Copyright Office her original artwork “Valentines Pretzel Milk,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 26, 2022, pictured here.



29. Hilber registered with the United States Copyright Office her original artwork “Valentines Foils Dark,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 26, 2022, pictured here.



30. Hilber registered with the United States Copyright Office her original artwork “Valentines Milk Dark,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 26, 2022, pictured here.



31. Hilber registered with the United States Copyright Office her original artwork “Valentines Sea Salt Milk,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 26, 2022, pictured here.



32. Hilber registered with the United States Copyright Office her original artwork “Valentines Sea Salt Dark,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 26, 2022, pictured here.



33. Hilber registered with the United States Copyright Office her original artwork “Valentines Bordeaux,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 24, 2022, pictured here.



34. Hilber registered with the United States Copyright Office her original artwork “Valentines Marshmallow Heart,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 24, 2022, pictured here.



35. Hilber registered with the United States Copyright Office her original artwork “Valentines Billybobs,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 24, 2022, pictured here.



36. Hilber registered with the United States Copyright Office her original artwork “Heart Collage Design,” bearing Copyright Registration Number VAu 1-459-070 with an effective date of registration of December 22, 2021, and Copyright Registration Number VA 2-284-339 with an effective date of registration of January 24, 2022, pictured here.



37. Hilber registered with the United States Copyright Office her original artwork “Valentines Fruit,” bearing Copyright Registration Number VA 2-274-212 with an effective date of registration of October 12, 2021, pictured here.



38. Hilber registered with the United States Copyright Office her original artwork “Valentines Royals Dark Caramel,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 24, 2022, pictured here.



39. Hilber registered with the United States Copyright Office her original artwork “Valentines Royals Milk Peanut Butter,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 24, 2022, pictured here.



40. Hilber registered with the United States Copyright Office her original artwork “Valentines Royals Milk Caramel,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 24, 2022, pictured here.



41. Hilber registered with the United States Copyright Office her original artwork “Valentines Champagne Truffle Dark,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 24, 2022, pictured here.



42. Hilber registered with the United States Copyright Office her original artwork “Valentines Champagne Truffle Milk,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 24, 2022, pictured here.



43. Hilber registered with the United States Copyright Office her original artwork “Easter Product Photos: Foils,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 24, 2022, and Copyright Registration Number VVA 2-304-200 with an effective date of registration of May 26, 2022, pictured here.



44. Hilber registered with the United States Copyright Office her original artwork “Spring Pretzel Babies,” bearing Copyright Registration Number VA 2-274-212 with an effective date of registration of October 12, 2021, pictured here.



45. Hilber registered with the United States Copyright Office her original artwork “Easter Product Photos- Dark Caramel,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 24, 2022, pictured here.



46. Hilber registered with the United States Copyright Office her original artwork “Easter Product Photos- Milk Caramel,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 24, 2022, pictured here.



47. Hilber registered with the United States Copyright Office her original artwork “Easter Product Photos- Milk Peanut Butter,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 24, 2022, pictured here.



48. Hilber registered with the United States Copyright Office her original artwork “Easter Product Photos- Milk Pretzels,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 24, 2022, pictured here.



49. Hilber registered with the United States Copyright Office her original artwork “Valentine Tulip Truffles-Milk,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 24, 2022, pictured here.



50. Hilber registered with the United States Copyright Office her original artwork “Valentine Tulip Truffles- Dark,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 24, 2022, pictured here.



51. Hilber registered with the United States Copyright Office her original artwork “Large Easter Bordeaux,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 24, 2022, pictured here.



52. Hilber registered with the United States Copyright Office her original artwork “Easter Nutmallow – Milk,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 24, 2022, pictured here.



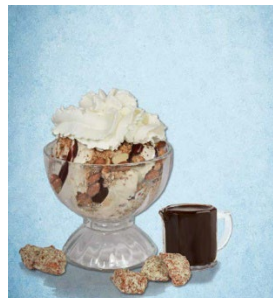
53. Hilber registered with the United States Copyright Office her original artwork “Easter Nutmallow – Milk,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 24, 2022, pictured here.



54. Hilber registered with the United States Copyright Office her original artwork "Jelly Rabbits Product Photo," bearing Copyright Registration Number VAu 1-469-781 with an effective date of registration of May 5, 2022, pictured here.



55. Hilber registered with the United States Copyright Office her original artwork "Bordeaux Ice Cream Sundae," bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 24, 2022, pictured here.



56. Hilber registered with the United States Copyright Office her original artwork “Strawberry Packaging Box Design,” bearing Copyright Registration Number VAu 1-469-781 with an effective date of registration of May 5, 2022, pictured here.



57. Hilber registered with the United States Copyright Office her original artwork “Mother’s Day Strawberries 2021,” bearing Copyright Registration Number VA 2-274-212 with an effective date of registration of October 12, 2021, pictured here.



58. Hilber registered with the United States Copyright Office her original artwork “Mother’s Day Strawberries 2021,” bearing Copyright Registration Number VA 2-274-212 with an effective date of registration of October 12, 2021, pictured here.



59. Hilber registered with the United States Copyright Office her original artwork “Banana Split Eblast/Photoshoot,” bearing Copyright Registration Number VAu 1-469-781 with an effective date of registration of May 5, 2022, pictured here.



60. Hilber registered with the United States Copyright Office her original artwork “Father’s Day Grapes,” bearing Copyright Registration Number VA-2-274-212 with an effective date of registration of January 4, 2022, pictured here.



61. Hilber registered with the United States Copyright Office her original artwork “Father’s Day Grapes,” bearing Copyright Registration Number VA 2-304-299 with an effective date of registration of May 26, 2022, pictured here.



62. Hilber registered with the United States Copyright Office her original artwork “Father’s Day Grapes,” bearing Copyright Registration Number VA 2-305-677 with an effective date of registration of May 26, 2022, pictured here.



63. Hilber registered with the United States Copyright Office her original artwork “Taffy Bowl Product Photo,” bearing Copyright Registration Number (Pending) 1-11501284761 with an effective date of registration of July 12, 2022, pictured here.



64. Hilber registered with the United States Copyright Office her original artwork “Birthday Kit Product Photo,” bearing Copyright Registration Number VA 2-304-200 with an effective date of registration of May 26, 2022, pictured here.



65. Hilber registered with the United States Copyright Office her original artwork “Christmas Cranberry Rascals Product Photo,” bearing Copyright Registration Number VA 2-304-200 with an effective date of registration of May 26, 2022, pictured here.



66. Hilber registered with the United States Copyright Office her original artwork “Christmas Cranberry Rascals Product Photo,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 24, 2022, pictured here.



67. Hilber registered with the United States Copyright Office her original artwork “Halloween Pretzels Milk Product Photo,” bearing Copyright Registration Number VAu 1-450-880 with an effective date of registration of October 10, 2021, pictured here.



68. Hilber registered with the United States Copyright Office her original artwork “Halloween Foils,” bearing Copyright Registration Number VAu 1-450-880 with an effective date

of registration of October 10, 2021, and Copyright Registration Number VA 2-304-200 with an effective date of registration of May 26, 2022, pictured here.



69. Hilber registered with the United States Copyright Office her original artwork “Halloween Foils,” bearing Copyright Registration Number VA 2-274-212 and Copyright Registration Number VA 2-305-677 with an effective date of registration June 21, 2022, with an effective date of registration of October 12, 2021, pictured here.



70. Hilber registered with the United States Copyright Office her original artwork “Halloween Royal,” bearing Copyright Registration Number VAu 1-450-811 with an effective date of registration of October 10, 2021, pictured here.



71. Hilber registered with the United States Copyright Office her original artwork “Halloween Royal,” bearing Copyright Registration Number VAu 1-450-811 with an effective date of registration of October 10, 2021, pictured here.



72. Hilber registered with the United States Copyright Office her original artwork “Halloween Pumpkin Caramel,” bearing Copyright Registration Number VAu 2-305-677 with an effective date of registration of June 21, 2022, pictured here.



73. Hilber registered with the United States Copyright Office her original artwork “Halloween Pumpkin Peanut Butter,” bearing Copyright Registration Number VAu 2-305-677 with an effective date of registration of June 21, 2022, pictured here.



74. Hilber registered with the United States Copyright Office her original artwork “Fall Truffles (Milk and Dark),” bearing Copyright Registration Number VAu 2-305-677 with an

effective date of registration June 21, 2022, and Copyright Registration Number VAu 2-305-677 with an effective date of registration June 21, 2022, pictured here.



75. Hilber registered with the United States Copyright Office her original artwork “Valentine Pretzels,” bearing Copyright Registration Number VA 2-274-212 with an effective date of registration of October 12, 2021, pictured here.



76. Hilber registered with the United States Copyright Office her original artwork “Christmas Bells Dark, Christmas Bells Milk, Christmas Santa Foils,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 24, 2022, pictured here.



77. Hilber registered with the United States Copyright Office her original artwork “Christmas Candy Cane Truffles, Christmas Milk Choc Truffles, Christmas Dark Choc

Truffles,” bearing Copyright Registration Number VA 2-284-339 with an effective date of registration of January 24, 2022, pictured here.



THE AGREEMENT

78. Beginning in September 2021, Hilber and Malley’s entered into an agreement (“Agreement”) in which Defendant promised to pay Plaintiff for graphic design services. As had previously been the arrangement between the parties on prior occasions, Hilber would provide Malley’s with graphic artwork for single use by Malley’s and Hilber would retain ownership of graphic work she prepared.

79. As a further term of the Agreement, Hilber was an independent contractor and reserved all ownership of all her work.

80. As an independent contractor, Hilber is the sole owner of work she prepared for Malley’s under Ohio and federal law.

81. Hilber submitted her graphic work as specimens (“Work(s)”) to the United States Copyright Office (“Copyright Office”) for registration of certain works set forth herein.

82. Pursuant to Agreement, Hilber submitted more than sixty invoices to Malley’s between 2018 and 2020 totaling more than \$230,000, which until late 2021, were paid promptly and without question or concern by Malley’s to Hilber for services.

83. In 2021, Malley’s requested to receive native files associated with Hilber’s Work. Hilber informed Malley’s that she was the owner of copyrights associated with her Work and therefore was not required to provide the requested native files associated with her Work.

84. Malley's continued the use of Hilber's services. However, upon information and belief, Malley's sought to obtain further services with the intention of not compensating Hilber under the Agreement.

85. In the Fall of 2021, Hilber prepared a substantial amount of Works requested by Malley's for the fall and winter holidays, including Sweetest Day, Halloween, Thanksgiving, Christmas, and Valentine's Day, which works were copyrighted.

86. On October 1, 2021, Hilber submitted an itemized invoice to Malley's in the amount of \$4,475.00 for prepared Works. Malley's approved the invoice in writing. The approval was likely made to deceive Hilber into continuing to perform the requested work for the holiday season.

87. Ultimately, Malley's refused to pay any portion of the October 1, 2021, invoice until Hilber brought suit against Malley's in the Court of Common Pleas for Cuyahoga County Ohio, Case No. CV 958450.

88. On October 6, 2021, Hilber submitted an itemized invoice to Malley's in the amount of \$17,125.00, which Malley's refused to pay until Hilber brought suit against Malley's in the Court of Common Pleas for Cuyahoga County Ohio, Case No. CV 958450.

89. Malley's has published the Works in printed and electronic advertisements that have reached thousands, if not millions of customers, locally, nationally and internationally, and which published advertisements which were the subject of the two invoices that remained unpaid until Hilber brought suit against Malley's in the Court of Common Pleas for Cuyahoga County Ohio, Case No. CV 958450.

90. Malley's has enjoyed substantial profits from sales that directly result from sales of products that were advertised through Hilber's Works.

91. Hilber brought suit in Court of Common Pleas for Cuyahoga County Ohio, Case No. CV 958450 for the unpaid invoices on January 19, 2022.

THE COPYRIGHT INFRINGEMENT ACTS

92. Subsequent to the work identified in the two invoices, Malley's began using the Works without authorization or permission from, agreement with, and/or compensation to Hilber.

93. Without authorization or permission from Hilber, Malley's used Hilber's "Thanksgiving Foil Product Photo," in December 2021 and December 2022 on Facebook, Twitter, Instagram, malleys.com and email blast to Malley's subscribers.

94. Without authorization or permission from Hilber, Malley's used Hilber's "November Cashew Flyer Print," in December 2021 and December 2022 on Facebook, Twitter, Instagram, malleys.com and email blast to Malley's subscribers.

95. Without authorization or permission from Hilber, Malley's used Hilber's "Peppermint Ohs!," in December 2021 and December 2022 on Facebook, Twitter, Instagram, malleys.com and email blast to Malley's subscribers.

96. Without authorization or permission from Hilber, Malley's used Hilber's "Christmas Royals Milk Caramels," in December 2021 and December 2022 on malleys.com.

97. Without authorization or permission from Hilber, Malley's used Hilber's "Christmas Royals Milk Peanut Butter," in December 2021 and December 2022 on malleys.com.

98. Without authorization or permission from Hilber, Malley's used Hilber's "Christmas Royals Dark Caramel," in December 2021 and December 2022 on malleys.com.

99. Without authorization or permission from Hilber, Malley's used Hilber's "Christmas Royals Dark Caramel," in November - December 2021 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

100. Without authorization or permission from Hilber, Malley's used Hilber's "Cyber Monday," in November - December 2021 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

101. Without authorization or permission from Hilber, Malley's used Hilber's "Sea Salt Christmas Product Photos," in December 2021 on malleys.com.

102. Without authorization or permission from Hilber, Malley's used Hilber's "Sea Salt Christmas Product Photos," in December 2021 on malleys.com.

103. Without authorization or permission from Hilber, Malley's used Hilber's "Christmas Open House," in November 2021 on malleys.com.

104. Without authorization or permission from Hilber, Malley's used Hilber's "St. Patrick's Pretzels," in March 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

105. Without authorization or permission from Hilber, Malley's used Hilber's "St. Patrick's Pretzels," in March 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

106. Without authorization or permission from Hilber, Malley's used Hilber's "Pumpkin Pie Truffle Product Photo," in November 2021 and November 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

107. Without authorization or permission from Hilber, Malley's used Hilber's "Christmas Shipping," in December 2021 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

108. Without authorization or permission from Hilber, Malley's used Hilber's "Bodacious Product Photo," in December 2021 on email blast to Malley's subscribers.

109. Without authorization or permission from Hilber, Malley's used Hilber's "Valentines Pretzel Dark," in January-February 2022 on Facebook, Twitter, Instagram, and email blast to Malley's subscribers.

110. Without authorization or permission from Hilber, Malley's used Hilber's "Valentines Pretzel Milk," in January-February 2022 on Facebook, Twitter, Instagram, and email blast to Malley's subscribers.

111. Without authorization or permission from Hilber, Malley's used Hilber's "Valentines Foils Dark," in January-February 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

112. Without authorization or permission from Hilber, Malley's used Hilber's "Valentines Milk Dark," in January-February 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

113. Without authorization or permission from Hilber, Malley's used Hilber's "Valentines Sea Salt Milk," in February 2022 on malleys.com and email blast to Malley's subscribers.

114. Without authorization or permission from Hilber, Malley's used Hilber's "Valentines Sea Salt Dark," in February 2022 on malleys.com and email blast to Malley's subscribers.

115. Without authorization or permission from Hilber, Malley's used Hilber's "Valentines Bordeaux," in January-February 2022 on Facebook, Twitter, Instagram, and email blast to Malley's subscribers.

116. Without authorization or permission from Hilber, Malley's used Hilber's "Valentines Marshmallow Heart," in January-February 2022 on Facebook, Twitter, Instagram, and email blast to Malley's subscribers.

117. Without authorization or permission from Hilber, Malley's used Hilber's "Valentines Billybobs," in January-February 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers

118. Without authorization or permission from Hilber, Malley's used Hilber's "Heart Collage Design," in January-February 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

119. Without authorization or permission from Hilber, Malley's used Hilber's "Valentines Fruit," in February 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

120. Without authorization or permission from Hilber, Malley's used Hilber's "Valentines Royals Dark Caramel," in January-February 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

121. Without authorization or permission from Hilber, Malley's used Hilber's "Valentines Royals Milk Peanut Butter," in January-February 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

122. Without authorization or permission from Hilber, Malley's used Hilber's "Valentines Royals Milk Caramel," in January-February 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

123. Without authorization or permission from Hilber, Malley's used Hilber's "Valentines Champagne Truffle Dark," in February 2022 on email blast to Malley's subscribers.

124. Without authorization or permission from Hilber, Malley's used Hilber's "Valentines Champagne Truffle Milk," in February 2022 on email blast to Malley's subscribers.

125. Without authorization or permission from Hilber, Malley's used Hilber's "Easter Product Photos: Foils," in April - May 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

126. Without authorization or permission from Hilber, Malley's used Hilber's "Spring Pretzel Babies," in April 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

127. Without authorization or permission from Hilber, Malley's used Hilber's "Easter Product Photos- Dark Caramel," in April 2022 on email blast to Malley's subscribers.

128. Without authorization or permission from Hilber, Malley's used Hilber's "Easter Product Photos- Milk Caramel," in April 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

129. Without authorization or permission from Hilber, Malley's used Hilber's "Easter Product Photos- Milk Peanut Butter," in April 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

130. Without authorization or permission from Hilber, Malley's used Hilber's "Easter Product Photos- Milk Pretzels," in April 2022 on email blast to Malley's subscribers.

131. Without authorization or permission from Hilber, Malley's used Hilber's "Valentine Tulip Truffles-Milk," in April - May 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

132. Without authorization or permission from Hilber, Malley's used Hilber's "Valentine Tulip Truffles- Dark," in April - May 2022 on Facebook, Twitter, Instagram, and email blast to Malley's subscribers.

133. Without authorization or permission from Hilber, Malley's used Hilber's "Large Easter Bordeaux," in April - May 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

134. Without authorization or permission from Hilber, Malley's used Hilber's "Easter Nutmallow- Milk," in April - May 2022 on Facebook, Twitter, Instagram, and email blast to Malley's subscribers.

135. Without authorization or permission from Hilber, Malley's used Hilber's "Easter Nutmallow- Milk," in April 2022 on email blast to Malley's subscribers.

136. Without authorization or permission from Hilber, Malley's used Hilber's "Jelly Rabbits Product Photo," in April - May 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

137. Without authorization or permission from Hilber, Malley's used Hilber's "Bordeaux Ice Cream Sundae," in May - July 2022 on Facebook, Twitter, Instagram, and email blast to Malley's subscribers.

138. Without authorization or permission from Hilber, Malley's used Hilber's "Strawberry Packaging Box Design," in April - May 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

139. Without authorization or permission from Hilber, Malley's used Hilber's "Mother's Day Strawberries 2021," in May 2022 on Facebook, Twitter, Instagram, and email blast to Malley's subscribers.

140. Without authorization or permission from Hilber, Malley's used Hilber's "Mother's Day Strawberries 2021," in May 2022 and October 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

141. Without authorization or permission from Hilber, Malley's used Hilber's "Banana Split Eblast/Photoshoot," in May 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

142. Without authorization or permission from Hilber, Malley's used Hilber's "Father's Day Grapes," in May - June 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

143. Without authorization or permission from Hilber, Malley's used Hilber's "Father's Day Grapes," in June 2022 on email blast to Malley's subscribers.

144. Without authorization or permission from Hilber, Malley's used Hilber's "Father's Day Grapes," in June 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

145. Without authorization or permission from Hilber, Malley's used Hilber's "Taffy Bowl Product Photo," in July - September 2022 on malleys.com.

146. Without authorization or permission from Hilber, Malley's used Hilber's "Birthday Kit Product Photo," in June 2022 on Facebook, Twitter, and Instagram.

147. Without authorization or permission from Hilber, Malley's used Hilber's "Christmas Cranberry Rascals Product Photo," in November 2022 on Facebook, Twitter, Instagram, and email blast to Malley's subscribers.

148. Without authorization or permission from Hilber, Malley's used Hilber's "Christmas Cranberry Rascals Product Photo," in November 2022 on Facebook, Twitter, Instagram, and email blast to Malley's subscribers.

149. Without authorization or permission from Hilber, Malley's used Hilber's "Halloween Pretzels Milk Product Photo," in October 2021 and October 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

150. Without authorization or permission from Hilber, Malley's used Hilber's "Halloween Foils," in October 2021 and October 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

151. Without authorization or permission from Hilber, Malley's used Hilber's "Halloween Foils," in October 2022 on Facebook, Twitter, Instagram, and email blast to Malley's subscribers.

152. Without authorization or permission from Hilber, Malley's used Hilber's "Halloween Royal," in October 2021 and October 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

153. Without authorization or permission from Hilber, Malley's used Hilber's "Halloween Royal," in October 2021 and October 2022 on email blast to Malley's subscribers.

154. Without authorization or permission from Hilber, Malley's used Hilber's "Halloween Pumpkin Carmel," in October 2021 and October 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

155. Without authorization or permission from Hilber, Malley's used Hilber's "Halloween Pumpkin Peanut Butter," in October 2021 and October 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

156. Without authorization or permission from Hilber, Malley's used Hilber's "Fall Truffles (Milk and Dark)," in November 2021 and November 2022 on Facebook, Twitter, Instagram, malleys.com, and email blast to Malley's subscribers.

157. Without authorization or permission from Hilber, Malley's used Hilber's "Valentine Pretzels," in November-December 2022 on Facebook Sponsored ad seen by those following and not following Malleys page.

158. Without authorization or permission from Hilber, Malley's used Hilber's "Christmas Bells Dark, Christmas Bells Milk, Christmas Santa Foils," in December 2022 on email blast to Malley's subscribers.

159. Without authorization or permission from Hilber, Malley's used Hilber's "Christmas Candy Cane Truffles, Christmas Milk Choc Truffles, Christmas Dark Choc Truffles," in December 2022 on email blast to Malley's subscribers.

160. Malley's has published substantial similarities and likeness of Hilber's copyrighted work without her permission.

161. Malley's use, in whole or in part, of Hilber's work without her permission constitutes a substantial taking.

162. Malley's publishing of substantial similarities and likeness of Hilber's copyrighted work without her permission is not a condition of their Agreement, and has subjected Hilber to financial harm and injury.

163. Malley's use of Hilber's work without her authorization and permission constitutes copyright infringement.

164. Malley's alteration of her copyrighted works has caused her harm.

165. Malley's created and displayed a derivative of Hilber's copyrighted work for its own benefit.

COUNT ONE
Declaratory Judgment/Injunctive Relief

166. Hilber incorporates Paragraphs 1 – 165 of this Complaint as if fully rewritten herein.

167. An actual and justiciable controversy exists between Hilber and Malley's related to whether Malley's has the right to use the copyrighted Works without Hilber's consent and in violation of Hilber's rights in the same.

168. The Court, pursuant to 28 U.S.C. § 2201(a) and Fed. R. Civ. P. 57, should declare that Malley's has no right or authorization to use or copy the copyrighted Works, as these actions have harmed and continue to harm Hilber in an amount to be determined at trial.

169. Such a declaration is proper, pursuant to U.S.C. § 2201(a), because it would terminate an "actual controversy" between the parties and declare Hilber's rights with respect to these issues.

COUNT TWO
Ohio Deceptive Trade Practices (R.C. § 4165.02)

170. Hilber incorporates Paragraphs 1 – 169 of this Complaint as if fully rewritten herein.

171. Hilber is the owner of the copyrighted Works ("intellectual Property").

172. The Intellectual Property is well known and distinctive.

173. Malley's unauthorized use of and derivations from the Intellectual Property is causing damage to Hilber by blurring and tarnishing the reputation and goodwill associated with the Intellectual Property in violation of 15 U.S.C. § 1125(c).

174. As a result, Hilber has suffered damages and will continue to suffer damages in an amount to be proven at trial.

COUNT THREE
Unfair Competition

175. Hilber incorporates Paragraphs 1 – 174 of this Complaint as if fully rewritten herein.

176. Malley's unfairly competes with Hilber through its unauthorized use of the Intellectual Property.

177. Malley's actions have damaged Hilber in the form of, inter alia, lost sales, harm to reputation, and tarnishment.

178. As a direct and proximate cause of Malley's conduct, Hilber has suffered and will continue to suffer damages in an amount to be proven at trial.

COUNT FOUR
Copyright Infringement

179. Hilber incorporates Paragraphs 1 – 178 of this Complaint as if fully rewritten herein.

180. Hilber owns the valid copyright in the copyrighted Works.

181. Malley's created offending works by mimicking the copyrighted Works and making it a derivative work ("Offending Images").

182. Only Hilber, as the owner of the copyright in the copyrighted Works, has the right to create works derivative therefrom.

183. Malley's Offending Images, derived from the copyrighted Works, remain substantially similar, and in many respects identical, to the original.

184. Accordingly, Malley's has infringed upon Hilber's rights in the copyrighted Works.

185. In addition to Malley's direct infringement, it has contributed to or caused infringement of the copyrighted Works by others.

186. Malley's distributed or enabled distribution by publishing the Offending Images and caused, induced, or materially contributed to the display and publication of the Offending Image by Malley's partners, distributors, or resellers.

187. Malley's is and was aware of the infringing activity or has remained willfully blind thereto.

188. As a direct and proximate cause of Malley's conduct, Hilber has suffered and will continue to suffer damages in an amount to be proven at trial.

189. Malley's has substantial profits from its use of the Offending Images.

190. Hilber is entitling to statutory damages for each infringed copyrighted Work, per publication.

191. Hilber is entitled to actual damages, including Malley's profits, loss of her own revenue and profits.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Caroline Hilber prays that this Court enter judgment against Defendant Malley's Candies, Inc. as follows:

- A. As to Count One, a declaratory judgment declaring that Malley's is unauthorized to use the Copyright, and permanently enjoining Malley's from any further use of the Intellectual Property;

- B. As to Count Two, award compensatory damages in an amount to be determined at trial, but at least \$25,000, as well as Hilber's attorney's fees and costs, disgorge Malley's of their profits from all infringing sales, and permanently enjoin Malley's from using the Intellectual Property in violation of R.C. § 4165.02;
- C. As to Count Three award compensatory damages in an amount to be determined at trial, but at least \$25,000, as well as Hilber's attorney's fees and costs, disgorge Malley's of the proceeds from their infringing sales, and permanently enjoin Malley's from unfairly competing with Hilber by using the Intellectual Property; and
- D. As to Count Four, award statutory damages and compensatory damages in an amount to be determined at trial, but at least \$25,000, as well as Hilber's attorney's fees and costs, disgorge Malley's of the proceeds from their infringement, and permanently enjoin Malley's from unfairly competing with Hilber by using the copyrighted Works or any derivative work, including the Offending Images.

Respectfully submitted,

/s/Patrick J. Thomas

Patrick J. Thomas (0075276)
Ritzler, Coughlin & Paglia, Ltd.
1360 East Ninth Street
500 IMG Center
Cleveland, Ohio 4114
Telephone: 216.241.8333
Facsimile: 216.241.5890
pthomas@rcp-attorneys.com

/s/ A. Steven Dever

A. Steven Dever (0024982)
A. Steven Dever Co., L.P.A.
13363 Madison Avenue
Lakewood, OH 44107
Phone: (216) 228-1166
Fax: (216) 228-3484
e-mail: astevendevery@aol.com

Attorneys for Plaintiff Caroline Hilber

JURY DEMAND

Plaintiff Caroling Hilber hereby demands a trial by jury on all issues triable.

/s/Patrick J. Thomas

Patrick J. Thomas (0075276)

One of the Attorneys for Plaintiff Caroline Hilber